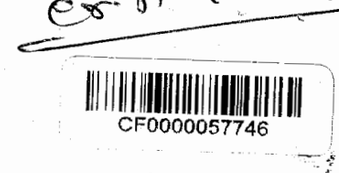
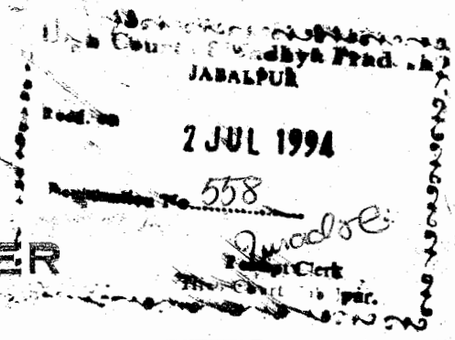
Cr A. 1009/94 (2)





XII-188/(Jail)
C. J. P. R. 2,000-9-84

APPEAL OF PRISONER

No 450/92 Name रतन उर्फ उसाउ

Father,s name प्रमाकर उर्फ उसाउ

Residence ग्राम [illegible] जिला रामगढ़ Age 30 वर्ष

Sentenced to आजीवन कारावास on अदि जिला रामगढ़ धारा 302/34 भा.दं.वि. by 31/3/1994

Under section 302/34 भा.दं.वि.

S.T.NO. 272/90 & 273/90

It is explained to the prisoner the if he states or wishes to be represented by legal practitioner the Appelate court will not proceed with the base for seven days unless the legal practitioner appears if the legal practitioner does not appear with in seven days he may not be heard at all if the prianor states that he does not wish t be represented by legal practitioner the court may proceed at once with the case an I will not be obliged to give a hearing to any leagl practitioner who should appear.

1 Date of Application for copy of Judgement 12/6/1994

2 Date of which copy received 12/6/1994

3 Date on which Appeal sent 27-6-94

4 Whether the prisoner wishes to be represented or not – yes/~~No.~~

No. 450/92 Name रतन उर्फ उसाउ उर्फ प्रमाकर उर्फ उसाउ

Continued in [illegible] Jail [illegible]

No. 446 /1009/ dated 27/6/94 1994

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ [illegible]

toather with a copy of Judgement or order passed in the case for favour of trganamission to the proper Appelliate Court.

Superintendent

Jail अधीक्षक,
केन्द्रीय जेल, रायपुर. (म.प्र.)

Date of receipt in C. J. M.'S Office

Date of receipt of record to accompany

Memo of Appeal of the Appellate Court

No. Dated 198

Forwarded to the

C. J. Magistrate

Date of hearing

(P. T. O)

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Criminal Appeal No 1009/94 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND
HON'BLE MR. V.K. SHRIVASTAVA, JJ.

6-12-2005

Shri Abhay Tiwari, counsel for the appellants.

As there is no representation on behalf of accused Mohan, therefore, Shri Abhay Tiwari, Advocate, is appointed amicus curiae to argue the appeal on his behalf.

Shri Ashish Shukla, Additional Public Prosecutor with Shri Akhil Mishra, Panel Lawyer for the State/respondent.

Oral.

Criminal Appeal No.1009/94 filed by Ratan Esai, Criminal Appeal No.1011/94 filed by Mohan and Criminal Appeal No.1010/94 filed by Lakhnu @ Lekhu arising out of common judgment of conviction and sentence passed by the Additional Sessions Judge, Baloda Bazar, District: Raipur dated 31st March 1994 in S.T. Nos. 272/90 and 273/90 in connection with the murders of Babulal and Budhari Satnami on 15-5-90 at about 2 p.m. in the village Dhekuna committed by the accused/appellants along with other accused namely Itwari, who died during the trial, therefore, these appeals are being decided by this common judgment.

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Learned Additional Sessions Judge after holding the accused/appellants guilty for the commission of offence under Section 302 read with Section 34 of the I.P.C. for committing the murders of Babulal and Budhari Satnami, sentenced each of the accused/appellants to undergo imprisonment for life.

The prosecution case, in brief, is that on 15-5-90 PW-2 Teksingh Chouhan lodged the F.I.R. Ex.-P/7 & P/8 at 7.30 p.m. and 7.45 p.m. respectively at the Police Station Simga to the effect that today he came to know at Vishrampur Bus Stand that Ratan Esai and others have quarreled with Babulal Masih and Budhari and others. Ratan and others have murdered Babulal and Budhari Satnami. After reaching the village he saw that the bodies of the sisters of Mohan were lying near the tubewell. Kunti Bai and Radha Bai have received the injuries in the incident. On this, the Station House Officer registered the case and took up the investigation. During the investigation, Panchanama of the dead body of Babulal (Ex.-P/1) and Panchanama of the dead body of Budhari (Ex.-P/2) were prepared. The blood stained soil and plain soil were taken into possession under Ex.-P/3 from the place of the incident where the body of Babulal was found. The site plan of the place of the incident (Ex.-P/4-A) was prepared. The dead bodies of Babulal and Budhari were sent for postmortem examination to the Primary Health

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Centre, Simga where PW-11 Dr. D.V.N. Sharma conducted the postmortem and prepared the postmortem report Ex.-P/10. He gave the opinion regarding the injuries Ex.-P/11. The postmortem of the dead body of Budhari was conducted by PW-11 Dr. D.V. N. Sharma. After the postmortem, Dr. Sharma prepared the report Ex.-P/12. The weapons of offence i.e. Lathi and knife were taken into possession. After completion of the investigation, two separate charge sheets were filed in the Court of Additional Chief Judicial Magistrate, Baloda Bazar. The Additional Chief Judicial Magistrate committed both the cases to the Sessions Judge, Raipur from where learned Additional Sessions Judge received both the cases (S.T. Nos.272/90 & 273/90) on transfer for trial.

The prosecution in order to prove the charge against the accused/appellants examined 23 witnesses. During the trial, as mentioned in the earlier part of this judgment, accused Itwari died. The statements of accused/appellants namely, Ratan, Lakhnu @ Lekhu and Mohan were recorded by the learned Additional Sessions Judge under Section 313 of the Cr.P.C. in which they denied the prosecution evidence appearing against them and stated that they are innocent, they have been falsely implicated in the crime on account of animosity and faction in the village. Learned Additional Sessions Judge after hearing the

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

arguments of Additional Public Prosecutor and counsel for the accused persons convicted and sentenced the accused/appellants in the manner as mentioned in the earlier part of this judgment.

We have heard Shri Abhay Tiwari, learned counsel for the accused/appellants and Shri Ashish Shukla, Additional Public Prosecutor with Shri Akhil Mishra, Panel Lawyer for the State/respondent.

The fact of death of Babulal and Budhari Satnami as homicidal in nature has not been disputed by learned counsel for the accused/appellants. Apart from that, as per the evidence of eyewitnesses PW-3 Punit Ram, PW-4 Thanwarin Bai, PW-6 Jeevan Masih, PW-7 Sumarit Bai, PW-9 Sukhlata, PW-10 Devsingh, PW-15 Bhuneshwar, injured witness, PW-21 Prem Masih and PW-23 Chen Das and also as per the evidence of PW-11 Dr. D.V.N. Sharma, who conducted the postmortem on the dead bodies of Babulal and Budhari Satnami has stated that there were 2 injuries on the body of Babulal, bones of the skull were fractured and also the radius, alma bone of right hand was found fractured, the cause of death was shock as a result of haemorrhage, the injuries were ante-mortem in nature which were caused by hard and blunt object and the death was homicidal in nature. He has further stated that there were 7 injuries on the body of Budhari, out of that injury Nos.4, 5 and 6 were stab wound. There was a

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —5—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

fracture of lower jaw and hyoid bone. The injuries Nos. 1 and 2 were caused by the hard and blunt object. The injuries Nos. 3 to 7 were caused by sharp edged weapon like knife. All the injuries were ante-mortem in nature and were sufficient to cause the death and the cause of death was shock as a result of haemorrhage. The postmortem reports are Ex.-P/10 and P/12. Therefore, in view of the evidence of eyewitnesses and the evidence of PW-11 Dr. D.V.N. Sharma, who conducted the postmortem on the dead bodies of the deceased persons, it is established that the nature of death of the deceased namely Babulal and Budhari Satnami was homicidal.

As far as the involvement of the accused/appellants in committing the murders of Babulal and Budhari Satnami is concerned, PW-6 Jeevan Masih has stated that he saw that accused Ratan was assaulting Babulal with a Lathi. At the same time Mohan and two others were attacking Budhari. Budhari was attacked on one side of the Society Bhawan whereas, Babulal was attacked in front of the Society Bhawan. Babulal and Budhari Satnami were crying 'save save'. PW-9 Sukhlata has stated that in the mid day she saw that Ratan was assaulting Babulal with a Lathi and at the same time, her husband Jeevan Masih came. He also witnessed the attack on Babulal, who was attacked near the Society go down and he died on the spot. PW-18 Dinesh Kumar Verma has stated

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

that he was working in the Seva Sahakari Samiti, Bishrampur at Dhekuna. When he came out of the society, he saw that Ratan attacked Babulal with a Lathi and Ratan murdered Babulal on the spot. Thereafter, he left the scene. PW-21 Prem Masih has stated that on the fateful day he went along with Babulal and Budhari Satnami to Simga from where they returned to village Dhekuna. Ratan came with a Lathi near the village tank and started attacking Babulal, as a result of which blood started oozing out of the injuries. On seeing this, Budhari started running towards the village Dhekuna. PW-23 Chen Das has also corroborated the above evidence and stated that Babulal, Budhari Satnami and Bhuneshwar were running and accused Ratan was chasing them carrying Danda in his hand. Ratan started attacking Babulal with a Lathi. He tried to intervene but Ratan did not stop and Babulal died on the spot. PW-15 Bhuneshwar, who is the injured witness, has stated that the accused persons were indulged in selling illicit liquor. His father Budhari, uncle Babulal and the villagers asked these accused persons not to sell liquor but they did not accede the request of villagers and continued with the selling of the liquor. On 15-5-90 at about 10 am his father Budhari and uncle Babulal went to the Police Station Simga to lodge the report that accused Itwari, Mohan, Lakhnu and Ratan were selling the liquor. When they left for Simga for lodging the report at the Police Station, accused

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Mohan, Lakhnu, Ratan and Itwari came to his house and threatened him with dire consequences saying that Babulal and Budhari have gone to lodge the report, they will see that they are finished. At that time, Lakhnu was carrying a knife and other accused persons were carrying Lathi. When at about 2 p.m. he went to the house of Dawood Esai in the village Dhekuna, his father Budhari and uncle Babulal were returning from Simga, accused persons Mohan, Lakhnu, Ratan and Itwari encircled Babulal and started assaulting him with a Lathi. When his father tried to run away from the place, by the time he reached near the society go-down, the accused persons started chasing saying catch Budhari. Thereafter, they assaulted him with a Lathi and knife as a result of which Babulal and Budhari Satnami died on the spot. PW-3 Punit Ram has also corroborated the above evidence. He has stated that he was at his residence. He saw that Budhari was coming from south side and in front of his house Itwari stopped Budhari and attacked him with a Lathi on his shoulder as a result of which Budhari fell down. At that time, Lakhnu came and he took out the knife from the pant and started attacking Budhari with a knife. He assaulted on his neck, back and face. PW-4 Thanwarin Bai has also corroborated the above evidence. Therefore, in view of the above evidence of the eyewitnesses, it is established that Ratan assaulted Babulal with a Lathi whereas, other accused persons

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namely Lakhnu, Mohan and Itwari assaulted Budhari with a knife and lathi. In the cross-examination of these eyewitnesses, the defence has not been able to elicit any fact or circumstance, which makes the evidence of these witnesses unreliable and untrustworthy. Most of the witnesses are villagers and there is no reason for them to give false evidence against the accused persons. PW-15 Bhuneshwar is an injured witness. Lathi and knife were also recovered at the instance of the accused persons. Therefore, involvement of the accused/appellants in committing the murders of Babulal and Budhari Satnami stands established and we do not find any ground to interfere with the finding of the trial Court to that effect.

Shri Abhay Tiwari, learned counsel for the accused/appellants argued that as per the evidence of eyewitnesses Ratan assaulted only Babulal, that too with a Lathi and he caused 2 injuries, therefore, the offence against the accused does not travel beyond under section 304-II of the I.P.C. As far as other accused persons i.e. Mohan and Lakhnu are concerned, against them also offence under Section 304-II of the I.P.C. is made out and offence under Section 302 read with Section 34 of the I.P.C. was not made out.

In order to appreciate the arguments advanced by learned counsel for the accused/appellants, we have perused the evidence. It is evident

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from the evidence of PW-15 Bhuneshwar that the accused persons, particularly, accused Ratan, who is the brother-in-law of accused Mohan, Lakhnu and Itwari came to village Dhekuna and started living there. Thereafter, Ratan and other accused persons were involved in selling illicit liquor which was objected by deceased Babulal, Budhari Satnami and other villagers also. When these persons did not stop, on objection by the deceased persons and the villagers, on the fateful day the deceased persons along with Shiv Prasad went to the Police Station Simga to lodge the report. When the accused persons came to know about this fact, they went to the house of Bhuneshwar, son of deceased Budhari, threatened him with dire consequences and said that Babulal and Budhari Satnami had gone to lodge the report, they will finish them. At that time, accused Lakhnu was carrying a knife and other accused persons were carrying Lathi. PW-8 Shiv Prasad, who was the Sarpanch of the village at the relevant time has stated that deceased Babulal and Budhari Satnami made a complaint to the Panchayat regarding selling of liquor by the accused persons and a meeting of the Panchayat was also convened in that respect but the accused persons did not accept the Panchayat's advice. 10 days thereafter, Babulal and Budhari Satnami made a complaint regarding the abuses hurled by the accused persons on which he along with Kotwar and these persons went to lodge the report

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —16—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

at the Police Station. Thereafter, he came to know about the murders of Babulal and Budhari Satnami. Deceased Babulal and Budhari Satnami were regularly making the complaint against the accused persons regarding selling of liquor by them, which was not liked by the accused persons. In the first instance, they threatened Bhuneshwar, when Babulal and Budhari Satnami returned from the Police Station, Simga, the accused/appellants attacked and committed murders of Babulal and Budhari Satnami.

As far as the question regarding common intention of the accused persons in committing the murders of Babulal and Budhari Satnami is concerned, the Hon'ble Apex Court in the matter of **Girija Shankar V. State of U.P.** reported in **2004 AIR SCW 810** held that:

> "The distinctive feature of the Section is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under S. 34 if such criminal act is done in furtherance of common intention of the persons who join in committing the crime. Intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances. In order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -11-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

mind of all the accused persons to commit the offence for which they are charged with the aid of S.34, be it pre-arranged or on the spur of moment; but it must necessarily be before the commission of the crime. The true concept of Section 34 is that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself. The existence of a common intention amongst the participants in a crime is the essential element for application of this Section. It is not necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar. The acts may be different in character, but must have been actuated by one and the same common intention in order to attract the provision."

Therefore, in the light of the above judgment of the Hon'ble Apex Court, if we examine the facts and circumstances of the present case in which the offence was committed by the accused/appellants, it is evident from the evidence of PW-15 and PW-8 that the accused persons were indulged in selling the liquor in the village which was not liked by the villagers. The same was objected by the deceased persons and the villagers. A Panchayat was also convened but even thereafter when the accused/appellants did not stop from selling the liquor, the deceased persons along with Sarpanch and Kotwar went to the Police Station Simga to lodge the report. When the accused persons came to know about this

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —12—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

fact, they went prepared with deadly weapons like Lathi and knife to the house of Budhari, at that time PW-15 Bhuneshwar, injured witness, was present in the house to whom the accused persons threatened with dire consequences and said that they will murder Babulal and Budhari Satnami, who went to lodge the report at the Police Station. By the noon when they returned, the accused/appellants executed their plan which was declared by them few hours before.

The evidence of the eyewitnesses which has been discussed in the earlier part of this judgment shows that the manner in which all the accused persons took participation in the crime, Ratan attacked Babulal with a Lathi, at the same time, other accused persons namely Mohan and Itwari attacked Budhari with a Lathi, thereafter Lakhnu @ Lekhu attacked with the knife and Budhari received as many as 7 injuries on his body.

If we look into the postmortem report of Babulal, virtually the skull of Babulal was smashed as per the evidence of PW-11 Dr. Sharma. Bone of the skull of Babulal was fractured from various places. At few places, bone was not available in the skull. Some bones pierced into the cranial cavity and the brain matter was missing where the skull bone was fractured, therefore, the attack by the accused/appellants was pre-planned, that too with a common intention to commit the murders of

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -13-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Babulal and Budhari Satnami for which they threatened to PW-15 Bhuneshwar before the commission of the crime. Therefore, in view of the above ample evidence, we are not obliged to accept the arguments advanced by learned counsel for the accused/appellants that there was no intention to commit the murder.

The manner in which both the deceased were done to death mercilessly and looking to the nature of injuries it is established that there was common intention of the accused persons to commit the murders of Babulal and Budhari Satnami. Therefore, we do not find any substance in the said appeals on any ground. The aforesaid appeals are, therefore, liable to be dismissed and they are hereby dismissed.

Accused/appellants Ratan and Lakhnu are on bail. They are directed to surrender before the trial Court to serve the remaining sentence.

It has been submitted in writing by learned Additional Public Prosecutor that accused Mohan has been released on permanent parole. It is for the learned trial Court to ascertain the factual position and to act in accordance with law.

Sd/-
L.C. Bhadoo
Judge

Sd/-
V.K. Shrivatava
Judge

Barve

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